

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 205 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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WINDSOR FOODS LTD.

Versus

COMMISSIONER OF INCOME-TAX

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Appearance:

Mr. B.D.Karia and Mr. R.K.Patel for  
MR RK PATEL for Petitioner  
Mr. Mihir Joshi MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 15/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following questions for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

" Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the additional liability on account of exchange fluctuation in repayment of foreign exchange loans from financial institution for purchase of machinery was not a revenue expenditure?

2. The assessee had claimed deduction for additional liability on account of exchange fluctuation in repayment of foreign exchange loan from the financial Institutions for the purchase of machinery. The Inspecting Assistant Commissioner (Assessment) rejected the assessee's claim. On appeal, CIT(Appeals), also rejected the assessee's claim following the Tribunal's order in assessee's own case for the assessment year 1980-81. The Tribunal upheld the jurisdiction of CIT (Appeals). There was a Reference made from the decision of the Tribunal in respect of the assessment year 1980-81 by the Revenue in the assessee's own case being ITR No.227 of 1985 which came to be decided by this Bench on 5.3.98. This Court held in connection with the question which was similar to the present one that the additional liability that had arisen due to fluctuation in exchange rate in the previous year was clearly referable to the liabilities of the capital nature and not to the liability of Revenue account and the additional liability was required to be added in the actual cost of the assets in view of the provisions of section 43A(1) of the Act. It was therefore, held that the additional liability was not of capital nature and could never be treated on revenue account. We accordingly hold that the Tribunal was right in coming to the conclusion that such additional liability on account of exchange fluctuation was not revenue expenditure. The question referred is therefore, answered in the affirmative against the assessee in favour of the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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